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REPLY TO:
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INSURANCE BUILDING
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BULLETIN

No. 88-5

September 1, 1988

Subject: UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR AGENTS

The purpose of this bulletin is to clarify any confusion there may be as to what is permitted and prohibited under WAC 284-30-800.

General Standard:

All gifts, rewards or payments of whatever kind (this includes meals and beverages), which are given to real estate agents, brokers, and others who may be in a position to influence the selection of a title insurer, as inducements or rewards for placing or causing title insurance business to be given to the title insurer, are prohibited unless verification can be made on an individual case-by-case basis that no more than a cumulative \$12.00 value is given to each recipient in any twelve month period. (A \$5.00 limitation continues to apply with respect to insureds and prospective insureds.)

Because there has been confusion on this point, we repeat: THERE CAN BE NO GIFTS OF ANYTHING OF VALUE IN EXCESS OF \$12 (ANNUALLY) WHETHER OR NOT THE TITLE COMPANY IS EXPECTING A TITLE ORDER AS A RESULT. Realistically, every gift is made in contemplation of ultimately selling insurance.

It was the intent of WAC 284-30-800 to take title insurers out of the hospitality and entertainment business.

This means no Seahawk tickets, no Sonics tickets, no VCRs, no free services such as messenger services (except routine services provided to customers in connection with the transaction of insurance), no boat trips and no furniture, if the value exceeds the \$12 limitation.

A title insurer may have its own occasional open house and may sponsor a hospitality suite at such events as an annual convention of real estate agents or brokers, if the event is broadly open to general attendees. It may not assist in the financing or hosting of a real estate agency's open house or the promotional activities of other entities. When a title insurer or its agents do engage in their own promotional activity of this type, they must conduct it so that the gift limitations will not be exceeded on a general basis with respect to those attending.

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WAC 284-30-800 UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR AGENTS. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twelve dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150, which continue to limit gifts, payments and other inducements to a five dollar maximum, per person, per year.

RCW 48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on his or her own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances. [1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

RCW 48.30.150 Illegal inducements. No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to the insured or prospective insured or to any other person on his behalf in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]